

**ASSEMBLY BILL**

**No. 2511**

**Introduced by Assembly Member Jones  
(Coauthors: Assembly Members Garcia and Leslie)**

February 23, 2006

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An act to amend Sections 65008, 65400, 65589.5, 65863, 65909, and 65950 of, to add Sections 65589.2 and 65801 to, and to repeal Sections 65852.1 and 66037 of, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2511, as introduced, Jones. Land use: housing.

(1) The Planning and Zoning Law prohibits a city, county, city and county, and other local governmental agency from prohibiting or discriminating against a residential development or emergency shelter because of specified reasons, including that the development is intended for occupancy by persons or families of low, moderate, or middle income.

This bill would include within in this prohibition the intended occupancy by persons or families of very low income.

(2) The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and of any land outside its boundaries that bears relation to its planning. That law requires this general plan to include several elements, including land use, circulation, housing, open space, and conservation elements, which are required to meet specified requirements. After the legislative body of a city, county, or city and county adopts all or part of a general plan, the Planning and Zoning Law requires the agency to provide an annual report to the legislative body, the Office of Planning

and Research, and the Department of Housing and Community Development that includes specified information regarding the status of the plan and progress in its implementation. This report is due by April 1 of each year, except for the 2006 calendar year when it is due on October 1.

This bill would require a court to issue an order or judgment compelling compliance with this reporting requirement within 60 days if, upon a motion to that effect, the court finds that a city, county, or city and county failed to timely submit a report that substantially complies with the applicable requirements. The bill would authorize the court to grant appropriate sanctions and require the court to retain jurisdiction to ensure that its order or judgment is carried out.

(3) Existing law requires an action to challenge a general plan or any element of a general plan on the grounds that the plan or element does not substantially comply with specified requirements to be brought as a petition for a writ of mandate.

This bill would require a person who brings an action as described above to furnish to the Attorney General a copy of any pleading filed by the person in the action within 10 days after the pleading is filed and would prohibit relief from being granted until a copy of the pleading is furnished to the Attorney General.

(4) The Planning and Zoning Law requires that a local agency not disapprove a housing development project for very low, low-, or moderate-income households or condition its approval in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.

The Planning and Zoning Law also requires the court, in an action to enforce these provisions, to issue an order or judgment to compel compliance with these provisions within 60 days if the court finds that the local agency disapproved the project or conditioned its approval without making the required findings or without making sufficient findings supported by substantial evidence, and authorizes the court to issue further orders to ensure that the purposes and policies of these provisions are fulfilled if its order or judgment has not been carried out within the 60-day period.

This bill would provide that these provisions be known and cited as the Housing Accountability Act.

(5) Existing law provides for the adoption and administration of zoning laws, ordinances, rules, and regulations by counties and cities,

as well as the implementation of general plans. Existing law declares the intent of the Legislature to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.

Existing law makes various findings and declarations regarding the lack of affordable housing and declares that it is the policy of the state that a local government not reject or make infeasible affordable housing developments that contribute to meeting state housing need without a thorough analysis of the effects of the action.

This bill would state the intent of the Legislature that local agencies comply with laws that facilitate development of housing and would list some of the laws that provide incentives for, facilitate, and expedite the construction of affordable housing and that have reformed regulatory and planning laws.

(6) The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for single-family and multifamily residence, as prescribed. It also authorizes a local agency to issue a zoning variance, special use permit, or conditional use permit for a dwelling unit of a specified size to be constructed either attached to or detached from a primary residence on a parcel zoned for a single-family residence if the dwelling unit is intended for the sole occupancy of one adult or 2 adult persons aged 62 years or older.

This bill would repeal this specific authority of a local agency.

(7) The Planning and Zoning Law prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density to a lower residential density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan, including the housing element, and the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The city, county, or city and county may reduce the residential density for a parcel if it identifies sufficient additional sites, as prescribed.

This bill would define a lower residential density below which the city, county, or city and county would be required to make the above described written findings.

(8) Existing law requires each city, county, or city and county to ensure that its inventory or programs of adequate sites identified in its housing element can accommodate its share of the regional housing need throughout the planning period and prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density for any parcel to a lower residential density unless the city, county, or city and county makes specified written findings supported by substantial evidence.

This bill would instead require each city, county, or city and county to ensure that its housing element inventory or its housing element program to make those sites available, can accommodate its share of the regional housing need throughout the planning period.

(9) The Planning and Zoning Law prohibits that a local governmental body, or any agency thereof, from conditioning the issuance of any building permit or zone variance on, among other things, the dedication of land for any purpose not reasonably related to the use of the property for which the variance, building, or use permit is requested.

This bill would additionally include within this prohibition development standards and conditions, laws, policies, and resolutions or regulations to a residential development unless they have been adopted, in writing, as of the date the application is deemed complete by the city, county, or city and county.

(10) The Permit Streamlining Act within the Planning and Zoning Law requires the lead agency that has the principal responsibility for approving a development project, as defined, to approve or disapprove the project within a specified number of days from the date of certification of an environmental impact report, the date of the adoption of a negative declaration, or the determination by the lead agency that the project is exempt from the California Environmental Quality Act.

This bill would authorize a court to issue an order or judgment compelling compliance with the deadline applicable to a development project that is affordable to very low or low-income households and for which the project applicant has applied for or will apply for financial assistance from a public agency or federal agency if the court finds that a city, county, or city and county failed to approve or disapprove the project within 60 days of the deadline. The bill would authorize the court to retain jurisdiction to ensure that its order or judgment is carried out. The bill would require the project, as

specified, to be deemed approved if the court determines that its order or judgment is not carried out within 60 days unless the applicant consents to a different decision or action by the local agency.

(11) Existing law authorizes the court to invite the parties involved in specified land use actions before the court to consider resolving their dispute by mediation. Actions filed on or after January 1, 2006, are not subject to this provision.

This bill would repeal the provision that makes those actions not subject to the invitation to mediate the dispute.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the  
2 following:

3 (a) Failure to timely prepare and file an adequate report on a  
4 general plan adopted by a city, county, or city and county before  
5 the mandatory deadlines as required pursuant to Section 65400 of  
6 the Government Code is a violation of law and contrary to the  
7 state housing goal.

8 (b) Preventing governmental delays in processing a permit  
9 application for a development project is an important state  
10 interest. Failure to comply with the mandatory deadlines set forth  
11 in Section 65950 of the Government Code is contrary to the state  
12 housing goal.

13 SEC. 2. Section 65008 of the Government Code is amended  
14 to read:

15 65008. (a) Any action pursuant to this title by any city,  
16 county, city and county, or other local governmental agency in  
17 this state is null and void if it denies to any individual or group of  
18 individuals the enjoyment of residence, landownership, tenancy,  
19 or any other land use in this state because of any of the following  
20 reasons:

21 (1) The race, sex, color, religion, ethnicity, national origin,  
22 ancestry, lawful occupation, familial status, disability, or age of  
23 the individual or group of individuals. For purposes of this  
24 section, both of the following definitions apply:

25 (A) "Familial status" as defined in Section 12955.2.

26 (B) "Disability" as defined in Section 12955.3.

1 (2) The method of financing of any residential development of  
2 the individual or group of individuals.

3 (3) The intended occupancy of any residential development by  
4 persons or families of *very low*, low, moderate, or middle  
5 income.

6 (b) (1) No city, county, city and county, or other local  
7 governmental agency shall, in the enactment or administration of  
8 ordinances pursuant to *any law, including* this title, prohibit or  
9 discriminate against any residential development or emergency  
10 shelter for any of the following reasons:

11 (A) Because of the method of financing.

12 (B) Because of the race, sex, color, religion, ethnicity, national  
13 origin, ancestry, lawful occupation, familial status, disability, or  
14 age of the owners or intended occupants of the residential  
15 development or emergency shelter.

16 (C) Because the development or shelter is intended for  
17 occupancy by persons and families of ~~low and~~ *very low, low, or*  
18 moderate income, as defined in Section 50093 of the Health and  
19 Safety Code, or persons and families of middle income.

20 (D) Because the development consists of a multifamily  
21 residential project that is consistent with both the jurisdiction's  
22 zoning ordinance and general plan as they existed on the date the  
23 application was deemed complete, except that a project shall not  
24 be deemed to be inconsistent with the zoning designation for the  
25 site if that zoning designation is inconsistent with the general  
26 plan only because the project site has not been rezoned to  
27 conform with a more recently adopted general plan.

28 (2) ~~The Notwithstanding Section 65889.5, the~~ discrimination  
29 prohibited by this subdivision includes the denial or conditioning  
30 of a residential development or shelter because of, ~~in whole or in~~  
31 ~~part, (A) the method~~ *either of the following:*

32 (A) ~~The method of financing or (B) the occupancy.~~

33 (B) *The occupancy* of the development by persons protected  
34 by this subdivision, including, but not limited to, persons and  
35 families of ~~low and~~ *very low, low, or* moderate income.

36 (c) For the purposes of this section, "persons and families of  
37 middle income" means persons and families whose income does  
38 not exceed 150 percent of the median income for the county in  
39 which the persons or families reside.

1 (d) (1) No city, county, city and county, or other local  
2 governmental agency may impose different requirements on a  
3 residential development or emergency shelter that is subsidized,  
4 financed, insured, or otherwise assisted by the federal or state  
5 government or by a local public entity, as defined in Section  
6 50079 of the Health and Safety Code, than those imposed on  
7 nonassisted developments, except as provided in subdivision (e).  
8 The discrimination prohibited by this subdivision includes the  
9 denial or conditioning of a residential development or shelter  
10 based in whole or in part on the fact that the development is  
11 subsidized, financed, insured, or otherwise assisted as described  
12 in this paragraph.

13 (2) No city, county, city and county, or other local  
14 governmental agency may, because of the race, sex, color,  
15 religion, ethnicity, national origin, ancestry, lawful occupation,  
16 familial status, disability, or age of the intended occupants, or  
17 because the development is intended for occupancy by persons  
18 and families of *very low*, low, moderate, or middle income,  
19 impose different requirements on these residential developments  
20 than those imposed on developments generally, except as  
21 provided in subdivision (e).

22 (e) Notwithstanding subdivisions (a) to (d), inclusive, ~~nothing~~  
23 ~~in this section or this title shall be construed to this section and~~  
24 ~~this title do not~~ prohibit either of the following:

25 (1) The County of Riverside from enacting and enforcing  
26 zoning to provide housing for older persons, in accordance with  
27 state or federal law, if that zoning was enacted prior to January 1,  
28 1995.

29 (2) Any city, county, or city and county from extending  
30 preferential treatment to residential developments or emergency  
31 shelters assisted by the federal or state government or by a local  
32 public entity, as defined in Section 50079 of the Health and  
33 Safety Code, or other residential developments or emergency  
34 shelters intended for occupancy by persons and families of low  
35 and moderate income, as defined in Section 50093 of the Health  
36 and Safety Code, or persons and families of middle income, or  
37 agricultural employees, as defined in subdivision (b) of Section  
38 1140.4 of the Labor Code, and their families. This preferential  
39 treatment may include, but need not be limited to, reduction or  
40 waiver of fees or changes in architectural requirements, site

1 development and property line requirements, building setback  
2 requirements, or vehicle parking requirements that reduce  
3 development costs of these developments.

4 (f) “Residential development,” as used in this section, means a  
5 single-family residence or a multifamily residence, including  
6 manufactured homes, as defined in Section 18007 of the Health  
7 and Safety Code.

8 (g) This section shall apply to chartered cities.

9 (h) The Legislature finds and declares that discriminatory  
10 practices that inhibit the development of housing for persons and  
11 families of *very low*, low, moderate, and middle income, or  
12 emergency shelters for the homeless, are a matter of statewide  
13 concern.

14 SEC. 3. Section 65400 of the Government Code is amended  
15 to read:

16 65400. (a) After the legislative body has adopted all or part  
17 of a general plan, the planning agency shall do both of the  
18 following:

19 ~~(a)~~

20 (1) Investigate and make recommendations to the legislative  
21 body regarding reasonable and practical means for implementing  
22 the general plan or element of the general plan, so that it will  
23 serve as an effective guide for orderly growth and development,  
24 preservation and conservation of open-space land and natural  
25 resources, and the efficient expenditure of public funds relating  
26 to the subjects addressed in the general plan.

27 ~~(b)~~

28 (2) Provide by April 1 of each year an annual report to the  
29 legislative body, the Office of Planning and Research, and the  
30 Department of Housing and Community Development that  
31 includes all of the following:

32 ~~(1)~~

33 (A) The status of the plan and progress in its implementation.

34 ~~(2)~~

35 (B) The progress in meeting its share of regional housing  
36 needs determined pursuant to Section 65584 and local efforts to  
37 remove governmental constraints to the maintenance,  
38 improvement, and development of housing pursuant to paragraph  
39 (3) of subdivision (c) of Section 65583.



1 The housing element portion of the annual report, as required  
2 by this paragraph, shall be prepared through the use of forms and  
3 definitions adopted by the Department of Housing and  
4 Community Development pursuant to the rulemaking provisions  
5 of the Administrative Procedure Act (Chapter 3.5 (commencing  
6 with Section 11340) of Part 1 of Division 3 of Title 2).

7 ~~(3)~~

8 (C) The degree to which its approved general plan complies  
9 with the guidelines developed and adopted pursuant to Section  
10 65040.2 and the date of the last revision to the general plan.

11 ~~(e)~~

12 (b) For the 2006 calendar year, the planning agency may  
13 provide the report required pursuant to ~~subdivision (b)~~ paragraph  
14 (2) of subdivision (a) by October 1, 2006.

15 (c) *If a court finds, upon a motion to that effect, that a city,*  
16 *county, or city and county failed to submit, within 60 days of the*  
17 *deadline established in this section, an annual report that*  
18 *substantially complies with the requirements of this section, the*  
19 *court shall issue an order or judgment compelling compliance*  
20 *with this section within 60 days. The plaintiff or petitioner may*  
21 *move for sanctions, and the court may, upon that motion, grant*  
22 *appropriate sanctions. The court shall retain jurisdiction to*  
23 *ensure that its order or judgment is carried out. If the court*  
24 *determines that its order or judgment is not carried out within 60*  
25 *days, the court may issue further orders as provided by law to*  
26 *ensure that the purposes and policies of this section are fulfilled.*  
27 *This subdivision applies to proceedings initiated on or after the*  
28 *first day of October following the adoption of forms and*  
29 *definitions by the Department of Housing and Community*  
30 *Development pursuant to paragraph (2) of subdivision (a), but*  
31 *no sooner than six months following that adoption.*

32 SEC. 4. Section 65589.2 is added to the Government Code, to  
33 read:

34 65589.2. A person who brings an action pursuant to Section  
35 65751 to challenge the housing element of a general plan shall  
36 furnish to the Attorney General a copy of any pleading, including  
37 an amended or supplemental pleading, filed by the person in the  
38 action. The pleading shall be furnished within 10 days after the  
39 pleading is filed. Relief, whether temporary or permanent, shall

1 not be granted until a copy of the pleading is furnished to the  
2 Attorney General.

3 SEC. 5. Section 65589.5 of the Government Code is amended  
4 to read:

5 65589.5. (a) The Legislature finds and declares all of the  
6 following:

7 (1) The lack of housing is a critical problem that threatens the  
8 economic, environmental, and social quality of life in California.

9 (2) California housing has become the most expensive in the  
10 nation. The excessive cost of the state's housing supply is  
11 partially caused by activities and policies of many local  
12 governments that limit the approval of housing, increase the cost  
13 of land for housing, and require that high fees and exactions be  
14 paid by producers of housing.

15 (3) Among the consequences of those actions are  
16 discrimination against low-income and minority households, lack  
17 of housing to support employment growth, imbalance in jobs and  
18 housing, reduced mobility, urban sprawl, excessive commuting,  
19 and air quality deterioration.

20 (4) Many local governments do not give adequate attention to  
21 the economic, environmental, and social costs of decisions that  
22 result in disapproval of housing projects, reduction in density of  
23 housing projects, and excessive standards for housing projects.

24 (b) It is the policy of the state that a local government not  
25 reject or make infeasible housing developments that contribute to  
26 meeting the housing need determined pursuant to this article  
27 without a thorough analysis of the economic, social, and  
28 environmental effects of the action and without complying with  
29 subdivision (d).

30 (c) The Legislature also recognizes that premature and  
31 unnecessary development of agricultural lands for urban uses  
32 continues to have adverse effects on the availability of those  
33 lands for food and fiber production and on the economy of the  
34 state. Furthermore, it is the policy of the state that development  
35 should be guided away from prime agricultural lands; therefore,  
36 in implementing this section, local jurisdictions should  
37 encourage, to the maximum extent practicable, in filling existing  
38 urban areas.

39 (d) A local agency shall not disapprove a housing  
40 development project, including farmworker housing as defined in

subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households or condition approval, ~~including through the use of design review standards~~, in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, *including through the use of design review standards*, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

1 (3) The denial of the project or imposition of conditions is  
2 required in order to comply with specific state or federal law, and  
3 there is no feasible method to comply without rendering the  
4 development unaffordable to low- and moderate-income  
5 households.

6 (4) The development project is proposed on land zoned for  
7 agriculture or resource preservation that is surrounded on at least  
8 two sides by land being used for agricultural or resource  
9 preservation purposes, or which does not have adequate water or  
10 wastewater facilities to serve the project.

11 (5) The development project is inconsistent with both the  
12 jurisdiction's zoning ordinance and general plan land use  
13 designation as specified in any element of the general plan as it  
14 existed on the date the application was deemed complete, and the  
15 jurisdiction has adopted a revised housing element in accordance  
16 with Section 65588 that is in substantial compliance with this  
17 article.

18 (A) This paragraph cannot be utilized to disapprove or  
19 conditionally approve a housing development project if the  
20 development project is proposed on a site that is identified as  
21 suitable or available for very low, low-, or moderate-income  
22 households in the jurisdiction's housing element, and consistent  
23 with the density specified in the housing element, even though it  
24 is inconsistent with both the jurisdiction's zoning ordinance and  
25 general plan land use designation.

26 (B) If the local agency has failed, in accordance with Section  
27 65583.2, to identify in the inventory of land in its housing  
28 element sites that can be developed for housing within the  
29 planning period and that are sufficient to provide for the  
30 jurisdiction's share of the regional housing need for all income  
31 levels pursuant to Section 65584, then this paragraph shall not be  
32 utilized to disapprove or conditionally approve a housing  
33 development project proposed for a site designated in any  
34 element of the general plan for residential uses or designated in  
35 any element of the general plan for commercial uses if residential  
36 uses are permitted or conditionally permitted within commercial  
37 designations. In any action in court, the burden of proof shall be  
38 on the local agency to show that its housing element does  
39 identify adequate sites with appropriate zoning and development  
40 standards and with services and facilities to accommodate the

1 local agency's share of the regional housing need for the very  
2 low and low-income categories.

3 ~~(e) Nothing in this section shall be construed to~~ *This section*  
4 *does not* relieve the local agency from complying with the  
5 Congestion Management Program required by Chapter 2.6  
6 (commencing with Section 65088) of Division 1 of Title 7 or the  
7 California Coastal Act (Division 20 (commencing with Section  
8 30000) of the Public Resources Code). ~~Neither shall anything in~~  
9 ~~this section be construed to~~ *This section also does not* relieve the  
10 local agency from making one or more of the findings required  
11 pursuant to Section 21081 of the Public Resources Code or  
12 otherwise complying with the California Environmental Quality  
13 Act (Division 13 (commencing with Section 21000) of the Public  
14 Resources Code).

15 ~~(f) Nothing in this section shall be construed to~~ *This section*  
16 *does not* prohibit a local agency from requiring the development  
17 project to comply with objective, quantifiable, written  
18 development standards, conditions, and policies appropriate to,  
19 and consistent with, meeting the jurisdiction's share of the  
20 regional housing need pursuant to Section 65584. However, the  
21 development standards, conditions, and policies shall be applied  
22 to facilitate and accommodate development at the density  
23 permitted on the site and proposed by the development project.  
24 ~~Nothing in this section shall be construed to~~ *This section does not*  
25 prohibit a local agency from imposing fees and other exactions  
26 otherwise authorized by law that are essential to provide  
27 necessary public services and facilities to the development  
28 project.

29 (g) This section shall be applicable to charter cities because  
30 the Legislature finds that the lack of housing is a critical  
31 statewide problem.

32 (h) The following definitions apply for the purposes of this  
33 section:

34 (1) "Feasible" means capable of being accomplished in a  
35 successful manner within a reasonable period of time, taking into  
36 account economic, environmental, social, and technological  
37 factors.

38 (2) "Housing development project" means a use consisting of  
39 either of the following:

40 (A) Residential units only.

1 (B) Mixed-use developments consisting of residential and  
2 nonresidential uses in which nonresidential uses are limited to  
3 neighborhood commercial uses and to the first floor of buildings  
4 that are two or more stories. As used in this paragraph,  
5 “neighborhood commercial” means small-scale general or  
6 specialty stores that furnish goods and services primarily to  
7 residents of the neighborhood.

8 (3) “Housing for very low, low-, or moderate-income  
9 households” means that either (A) at least 20 percent of the total  
10 units shall be sold or rented to lower income households, as  
11 defined in Section 50079.5 of the Health and Safety Code, or (B)  
12 100 percent of the units shall be sold or rented to  
13 moderate-income households as defined in Section 50093 of the  
14 Health and Safety Code, or middle-income households, as  
15 defined in Section 65008 of this code. Housing units targeted for  
16 lower income households shall be made available at a monthly  
17 housing cost that does not exceed 30 percent of 60 percent of  
18 area median income with adjustments for household size made in  
19 accordance with the adjustment factors on which the lower  
20 income eligibility limits are based. Housing units targeted for  
21 persons and families of moderate income shall be made available  
22 at a monthly housing cost that does not exceed 30 percent of 100  
23 percent of area median income with adjustments for household  
24 size made in accordance with the adjustment factors on which the  
25 moderate income eligibility limits are based.

26 (4) “Area median income” means area median income as  
27 periodically established by the Department of Housing and  
28 Community Development pursuant to Section 50093 of the  
29 Health and Safety Code. The developer shall provide sufficient  
30 legal commitments to ensure continued availability of units for  
31 very low or low-income households in accordance with the  
32 provisions of this subdivision for 30 years.

33 (5) “Neighborhood” means a planning area commonly  
34 identified in a community’s planning documents, and identified  
35 as a neighborhood by the individuals residing and working within  
36 the neighborhood. Documentation demonstrating that the area  
37 meets the definition of neighborhood may include a map  
38 prepared for planning purposes which lists the name and  
39 boundaries of the neighborhood.

1 (6) “Disapprove the development project” includes any  
2 instance in which a local agency does either of the following:

3 (A) Votes on a proposed housing development project  
4 application and the application is disapproved.

5 (B) Fails to comply with the time periods specified in  
6 subparagraph (B) of paragraph (1) of subdivision (a) of Section  
7 65950. An extension of time pursuant to Article 5 (commencing  
8 with Section 65950) shall be deemed to be an extension of time  
9 pursuant to this paragraph.

10 (i) If any city, county, or city and county denies approval or  
11 imposes restrictions, including design changes, a reduction of  
12 allowable densities or the percentage of a lot that may be  
13 occupied by a building or structure under the applicable planning  
14 and zoning in force at the time the application is deemed  
15 complete pursuant to Section 65943, that have a substantial  
16 adverse effect on the viability or affordability of a housing  
17 development for very low, low-, or moderate-income households,  
18 and the denial of the development or the imposition of  
19 restrictions on the development is the subject of a court action  
20 which challenges the denial, then the burden of proof shall be on  
21 the local legislative body to show that its decision is consistent  
22 with the findings as described in subdivision (d) and that the  
23 findings are supported by substantial evidence in the record.

24 (j) When a proposed housing development project complies  
25 with applicable, objective general plan and zoning standards and  
26 criteria, including design review standards, in effect at the time  
27 that the housing development project’s application is determined  
28 to be complete, but the local agency proposes to disapprove the  
29 project or to approve it upon the condition that the project be  
30 developed at a lower density, the local agency shall base its  
31 decision regarding the proposed housing development project  
32 upon written findings supported by substantial evidence on the  
33 record that both of the following conditions exist:

34 (1) The housing development project would have a specific,  
35 adverse impact upon the public health or safety unless the project  
36 is disapproved or approved upon the condition that the project be  
37 developed at a lower density. As used in this paragraph, a  
38 “specific, adverse impact” means a significant, quantifiable,  
39 direct, and unavoidable impact, based on objective, identified

1 written public health or safety standards, policies, or conditions  
2 as they existed on the date the application was deemed complete.

3 (2) There is no feasible method to satisfactorily mitigate or  
4 avoid the adverse impact identified pursuant to paragraph (1),  
5 other than the disapproval of the housing development project or  
6 the approval of the project upon the condition that it be  
7 developed at a lower density.

8 (k) The applicant or any person who would be eligible to  
9 apply for residency in the development may bring an action to  
10 enforce this section. If in any action brought to enforce the  
11 provisions of this section, a court finds that the local agency  
12 disapproved a project or conditioned its approval in a manner  
13 rendering it infeasible for the development of housing for very  
14 low, low-, or moderate-income households, including  
15 farmworker housing, without making the findings required by  
16 this section or without making sufficient findings supported by  
17 substantial evidence, the court shall issue an order or judgment  
18 compelling compliance with this section within 60 days,  
19 including, but not limited to, an order that the local agency take  
20 action on the development project. The court shall retain  
21 jurisdiction to ensure that its order or judgment is carried out and  
22 shall award reasonable attorney's fees and costs of suit to the  
23 plaintiff or petitioner who proposed the housing development,  
24 except under extraordinary circumstances in which the court  
25 finds that awarding fees would not further the purposes of this  
26 section. If the court determines that its order or judgment has not  
27 been carried out within 60 days, the court may issue further  
28 orders as provided by law to ensure that the purposes and policies  
29 of this section are fulfilled, including, but not limited to, an order  
30 to vacate the decision of the local agency, in which case the  
31 application for the project, as constituted at the time the local  
32 agency took the initial action determined to be in violation of this  
33 section, along with any standard conditions determined by the  
34 court to be generally imposed by the local agency on similar  
35 projects, shall be deemed approved unless the applicant consents  
36 to a different decision or action by the local agency.

37 (l) If the court finds that the local agency (1) acted in bad faith  
38 when it disapproved or conditionally approved the housing  
39 development in violation of this section and (2) failed to carry  
40 out the court's order or judgment within 60 days as described in



1 paragraph (k), the court in addition to any other remedies  
2 provided by this section, may impose fines upon the local agency  
3 that the local agency shall be required to deposit into a housing  
4 trust fund. Fines shall not be paid from funds that are already  
5 dedicated for affordable housing, including, but not limited to,  
6 redevelopment or low- and moderate-income housing funds and  
7 federal HOME and CDBG funds. The local agency shall commit  
8 the money in the trust fund within five years for the sole purpose  
9 of financing newly constructed housing units affordable to  
10 extremely low, very low, or low-income households. For  
11 purposes of this section, “bad faith” shall mean an action that is  
12 frivolous or otherwise entirely without merit.

13 (m) Any action brought to enforce the provisions of this  
14 section shall be brought pursuant to Section 1094.5 of the Code  
15 of Civil Procedure, and the local agency shall prepare and certify  
16 the record of proceedings in accordance with subdivision (c) of  
17 Section 1094.6 of the Code of Civil Procedure no later than 30  
18 days after the petition is served, provided that the cost of  
19 preparation of the record shall be borne by the local agency.  
20 Upon entry of the trial court’s order, a party shall, in order to  
21 obtain appellate review of the order, file a petition within 20 days  
22 after service upon it of a written notice of the entry of the order,  
23 or within such further time not exceeding an additional 20 days  
24 as the trial court may for good cause allow. If the local agency  
25 appeals the judgment of the trial court, the local agency shall post  
26 a bond, in an amount to be determined by the court, to the benefit  
27 of the plaintiff if the plaintiff is the project applicant.

28 (n) In any action, the record of the proceedings before the  
29 local agency shall be filed as expeditiously as possible and,  
30 notwithstanding Section 1094.6 of the Code of Civil Procedure  
31 or subdivision (m) of this section, all or part of the record may be  
32 prepared (1) by the petitioner with the petition or petitioner’s  
33 points and authorities, (2) by the respondent with respondent’s  
34 points and authorities, (3) after payment of costs by the  
35 petitioner, or (4) as otherwise directed by the court. If the  
36 expense of preparing the record has been borne by the petitioner  
37 and the petitioner is the prevailing party, the expense shall be  
38 taxable as costs.

39 (o) *This section shall be known, and may be cited, as the*  
40 *Housing Accountability Act.*

SEC. 6. Section 65801 is added to the Government Code, to read:

65801. (a) The Legislature finds and declares all of the following:

(1) This state faces a persistent and worsening housing supply crisis that prices rental and for sale housing beyond the reach of low-, moderate-, and middle-income households. Increasingly, teachers, local government employees, firefighters, police officers, and even doctors cannot afford to live in the communities where they work and spend more time sitting on the freeway and less time in their homes with their families.

(2) Developable land is in short supply for many reasons, chief of which is that land use regulations in many communities discourage the production of higher-density, less expensive, more affordable housing, particularly rental housing, forcing builders and workers to encroach onto farmland and natural resource lands in search of cheaper houses.

(3) Discriminatory zoning practices that are hostile to affordable housing not only restrict housing opportunities for minorities, seniors, people with disabilities, and people with limited incomes but also add to the housing burden of jurisdictions that welcome affordable housing.

(4) The Legislature has resolved that housing is a critical statewide problem that threatens the economic prosperity, environment, and quality of life of California families. The Legislature has provided incentives for, and to facilitate and expedite, the construction of affordable housing and has reformed onerous regulatory and planning barriers that delay construction and increase the cost of new housing. Those incentives and reforms can be found in the following provisions:

(A) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).

(B) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).

(C) Restrictions on disapproval of housing developments (Section 65585.5)

(D) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).

(E) Least cost zoning law (Section 65913.1).

1 (F) Density bonus law (Section 65915).

2 (G) Second dwelling units (Sections 65852.150 and 65852.2).

3 (H) By-right housing, in which certain multifamily housing  
4 are designated a permitted use (Section 65589.5).

5 (I) No-net-loss-in zoning density law limiting downzonings  
6 and density reductions (Section 65863).

7 (J) Requiring persons who sue to halt affordable housing to  
8 pay attorney fees (Section 65914) or post a bond (Section 529.2  
9 of the Code of Civil Procedure).

10 (K) Reduced time for action on affordable housing  
11 applications under the approval of development permits process  
12 (Article 5 (commencing with Section 65950) of Chapter 4.5).

13 (L) Limiting moratoriums on multifamily housing (Section  
14 65858).

15 (M) Prohibiting discrimination against affordable housing  
16 (Section 65008).

17 (N) California Fair Employment and Housing Act (Part 2.8  
18 (commencing with Section 12900) of Division 3).

19 (O) Community redevelopment law (Part 1 (commencing with  
20 Section 33000) of Division 24 of the Health and Safety Code,  
21 and in particular Sections 33334.2 and 33413).

22 (b) It is the intent of the Legislature that local agencies comply  
23 with laws that facilitate development of housing.

24 SEC. 7. Section 65852.1 of the Government Code is repealed.

25 ~~65852.1. Notwithstanding Section 65906, any city, including~~  
26 ~~a charter city, county, or city and county may issue a zoning~~  
27 ~~variance, special use permit, or conditional use permit for a~~  
28 ~~dwelling unit to be constructed, or which is attached to or~~  
29 ~~detached from, a primary residence on a parcel zoned for a~~  
30 ~~single-family residence, if the dwelling unit is intended for the~~  
31 ~~sole occupancy of one adult or two adult persons who are 62~~  
32 ~~years of age or over, and the area of floor space of the attached~~  
33 ~~dwelling unit does not exceed 30 percent of the existing living~~  
34 ~~area or the area of the floor space of the detached dwelling unit~~  
35 ~~does not exceed 1,200 square feet.~~

36 ~~This section shall not be construed to limit the requirements of~~  
37 ~~Section 65852. 2, or the power of local governments to permit~~  
38 ~~second units.~~

39 SEC. 8. Section 65863 of the Government Code is amended  
40 to read:

1     65863. (a) Each city, county, or city and county shall ensure  
2 that its *housing element* inventory ~~or programs of adequate sites~~  
3 ~~pursuant to described in~~ paragraph (3) of subdivision (a) of  
4 Section 65583 ~~and or its housing element program to make sites~~  
5 *available pursuant to* paragraph (1) of subdivision (c) of Section  
6 65583 can accommodate its share of the regional housing need  
7 pursuant to Section 65584, throughout the planning period.

8     (b) No city, county, or city and county shall, by administrative,  
9 quasi-judicial, ~~or~~ legislative, *or other* action, reduce, require, or  
10 permit the reduction of the residential density for any parcel to,  
11 *or allow development of any parcel at*, a lower residential density  
12 ~~that is below the density that was utilized by the Department of~~  
13 ~~Housing and Community Development in determining~~  
14 ~~compliance with housing element law, Article 10.6 (commencing~~  
15 ~~with Section 65580) of Chapter 3, as defined in paragraphs (1),~~  
16 *(2), and (3) of subdivision (h)*, unless the city, county, or city and  
17 county makes written findings supported by substantial evidence  
18 of both of the following:

19     (1) The reduction is consistent with the adopted general plan,  
20 including the housing element.

21     (2) The remaining sites identified in the housing element are  
22 adequate to accommodate the jurisdiction's share of the regional  
23 housing need pursuant to Section 65584.

24     (c) If a reduction in residential density for any parcel would  
25 result in the remaining sites in the housing element not being  
26 adequate to accommodate the jurisdiction's share of the regional  
27 housing need pursuant to Section 65584, the jurisdiction may  
28 reduce the density on that parcel if it identifies sufficient  
29 additional, adequate, and available sites with an equal or greater  
30 residential density in the jurisdiction so that there is no net loss of  
31 residential unit capacity.

32     (d) The requirements of this section shall be in addition to any  
33 other law that may restrict or limit the reduction of residential  
34 density.

35     (e) If a court finds that an action of a city, county, or city and  
36 county is in violation of this section, the court shall award to the  
37 plaintiff or petitioner who proposed the housing development,  
38 reasonable attorney's fees and costs of suit, except under  
39 extraordinary circumstances in which the court finds that  
40 awarding fees would not further the purposes of this section or

1 the court finds that the action was frivolous. This subdivision  
2 shall remain operative only until January 1, 2007, and as of that  
3 date is no longer operative, unless a later enacted statute that is  
4 enacted before January 1, 2007, deletes or extends that date.

5 (f) This section requires that a city, county, or city and county  
6 be solely responsible for compliance with this section, unless a  
7 project applicant requests in his or her initial application, as  
8 submitted, a density that would result in the remaining sites in  
9 the housing element not being adequate to accommodate the  
10 jurisdiction's share of the regional housing need pursuant to  
11 Section 65584. In that case, the city, county, or city and county  
12 may require the project applicant to comply with this section.  
13 The submission of an application for purposes of this subdivision  
14 does not depend on the application being deemed complete or  
15 being accepted by the city, county, or city and county.

16 (g) This section shall not be construed to apply to parcels that,  
17 prior to January 1, 2003, were either (1) subject to a development  
18 agreement, or (2) parcels for which an application for a  
19 subdivision map had been submitted.

20 (h) *For purposes of this section, "lower residential density"*  
21 *means any of the following:*

22 (1) *For sites zoned for residential use and identified in the*  
23 *local jurisdiction's housing element inventory described in*  
24 *paragraph (3) of subdivision (a) of Section 65583, a density*  
25 *below the density used to determine the total housing unit*  
26 *capacity pursuant to subdivision (c) of Section 65583.2.*

27 (2) *For sites that have been or shall be rezoned pursuant to*  
28 *the local jurisdiction's housing element program described in*  
29 *paragraph (1) of subdivision (c) of Section 65583, a density*  
30 *below the density used to determine compliance with that*  
31 *paragraph in a manner consistent with subdivision (c) of Section*  
32 *65583.2.*

33 (3) *For sites zoned for residential use and not identified in the*  
34 *local jurisdiction's housing element, a density that is lower than*  
35 *80 percent of the maximum allowable residential density for that*  
36 *parcel.*

37 SEC. 9. Section 65909 of the Government Code is amended  
38 to read:

1     65909. No local governmental body, or any agency thereof,  
2     may condition the issuance of any building or use permit or zone  
3     variance on any or all of the following:

4     (a) The dedication of land for any purpose not reasonably  
5     related to the use of the property for which the variance, building,  
6     or use permit is requested.

7     (b) The posting of a bond to guarantee installation of public  
8     improvements not reasonably related to the use of the property  
9     for which the variance, building, or use permit is requested.

10    (c) *Development standards and conditions, laws, policies, and*  
11    *resolutions or regulations relating to a residential development*  
12    *unless they have been adopted, in writing, as of the date the*  
13    *application is deemed complete by the city, county, or city and*  
14    *county. This subdivision does not in any way diminish or alter*  
15    *the power of local governments to protect against a condition*  
16    *dangerous to the public health or safety or to affect its obligation*  
17    *to comply with the conditions and requirements of any state or*  
18    *federal law.*

19    SEC. 10. Section 65950 of the Government Code is amended  
20    to read:

21    65950. (a) Any public agency that is the lead agency for a  
22    development project shall approve or disapprove the project  
23    within whichever of the following periods is applicable:

24    (1) One hundred eighty days from the date of certification by  
25    the lead agency of the environmental impact report if an  
26    environmental impact report is prepared pursuant to Section  
27    21100 or 21151 of the Public Resources Code for the  
28    development project.

29    (2) Ninety days from the date of certification by the lead  
30    agency of the environmental impact report if an environmental  
31    impact report is prepared pursuant to Section 21100 or 21151 of  
32    the Public Resources Code for the development project and all of  
33    the following conditions are met:

34    (A) ~~The~~ *At least 15 percent of the units in the development*  
35    *project is are* affordable to very low or low-income households,  
36    as defined by Sections 50105 and 50079.5 of the Health and  
37    Safety Code, respectively, *or the development project qualifies*  
38    *for a density bonus pursuant to Section 65915. Rents for the*  
39    *lower income units shall be set at an affordable rent, as that term*  
40    *is defined in Section 50053 of the Health and Safety Code.*

1 *Owner-occupied units shall be available at an affordable*  
2 *housing cost, as that term is defined in Section 50052.5 of the*  
3 *Health and Safety Code.*

4 (B) Prior to the application being deemed complete for the  
5 development project pursuant to Article 3 (commencing with  
6 Section 65940), the lead agency received written notice from the  
7 project applicant that an application has been made or will be  
8 made for an allocation or commitment of financing, tax credits,  
9 bond authority, or other financial assistance from a public agency  
10 or federal agency, and the notice specifies the financial assistance  
11 that has been applied for or will be applied for and the deadline  
12 for application for that assistance, the requirement that one of the  
13 approvals of the development project by the lead agency is a  
14 prerequisite to the application for or approval of the application  
15 for financial assistance, and that the financial assistance is  
16 necessary for the project to be affordable as required pursuant to  
17 subparagraph (A).

18 (C) There is confirmation that the application has been made  
19 to the public agency or federal agency prior to certification of the  
20 environmental impact report.

21 (3) Sixty days from the date of adoption by the lead agency of  
22 the negative declaration if a negative declaration is completed  
23 and adopted for the development project.

24 (4) Sixty days from the determination by the lead agency that  
25 the project is exempt from the California Environmental Quality  
26 Act (Division 13 (commencing with Section 21000) of the Public  
27 Resources Code) if the project is exempt from the California  
28 Environmental Quality Act.

29 ~~(b) Nothing in this section precludes~~

30 *(b) If a court finds that a city, county, or city and county failed*  
31 *to approve or disapprove a development project within 60 days*  
32 *of the deadline established in paragraph (2) of subdivision (a),*  
33 *the court may issue an order or judgment compelling compliance*  
34 *with this section within 60 days, including, but not limited to, an*  
35 *order that the local agency take action on the development*  
36 *project. The court may retain jurisdiction to ensure that its order*  
37 *or judgment is carried out. If the court determines that its order*  
38 *or judgment is not carried out within 60 days, the court may*  
39 *issue further orders as provided by law to ensure that the*  
40 *purposes and policies of this section are fulfilled, in which case*

1 *the application for the project, as constituted at the time the local*  
2 *agency failed to approve or disapprove it, along with any*  
3 *standard conditions determined by the court to be generally*  
4 *imposed by the local agency on similar projects, shall be deemed*  
5 *approved unless the applicant consents to a different decision or*  
6 *action by the local agency.*

7 *(c) This section does not preclude a project applicant and a*  
8 *public agency from mutually agreeing in writing to an extension*  
9 *of any time limit provided by this section pursuant to Section*  
10 *65957.*

11 *(e)*  
12 *(d) For purposes of this section, “lead agency” and “negative*  
13 *declaration” shall have the same meaning as those terms—*  
14 *defined have in Sections 21067 and 21064 of the Public*  
15 *Resources Code, respectively.*

16 SEC. 11. Section 66037 of the Government Code is repealed.

17 ~~66037. No action filed on or after January 1, 2006, shall be~~  
18 ~~subject to this chapter unless a later enacted statute, which is~~  
19 ~~chaptered before January 1, 2006, extends this date or deletes this~~  
20 ~~section.~~